

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

BELLWOOD CORP., et al.,

Plaintiffs.

Civil Action No. 5:21-cv-00320
Honorable Frank W. Volk, Judge

v.

Carter Bank & Trust, et al.,

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR
BIFURCATED RULE 12 BRIEFING AND
REQUEST FOR EXTENSION OF TIME TO RESPOND**

Plaintiffs in the above-captioned action, by and through their undersigned counsel, hereby file this response to Defendants' *Motion for Bifurcated Rule 12 Briefing* [Dkt. No. 40] (the "Bifurcation Motion") and request pursuant to Rule 7.1(a)(7) of the Local Rules of Civil Procedure to extend time to respond to Defendants' Rule 12 motion. In support hereof, Plaintiffs respectfully state as follows:

1. Since commencing this action on May 31, 2021, Plaintiffs have made every effort to be cooperative and constructive with Defendants in the interest of professional courtesy and judicial economy. That is why Plaintiffs agreed without debate to Defendants' request to extend Defendants' time to respond to the Complaint to July 16, 2021, as set forth in the Stipulation, dated June 17, 2021 [Dkt. No. 39], which represents an extension of no less than 22 days under the Federal Rules of Civil Procedure ("FRCP") for the first-served Defendant Carter Bank. *See* FRCP Rule 12(a)(1)(A)(i). That is also why Plaintiffs initially agreed to Defendants' request to bifurcate Defendants' motions to dismiss as described in the Bifurcation Motion, despite

Plaintiffs' firm belief that Defendants' Rule 12(b) motions will be denied, and Plaintiffs' eagerness to proceed expeditiously with the adjudication of their claims against Defendants.

2. In exchange for that consent, Plaintiffs sought Defendants' consent to a modest extension of approximately 30 days of Plaintiffs' time to respond to the initial motion pursuant to Rules 12(b)(2) and (3) (the "Initial 12(b) Motion"), an extension roughly equivalent to that voluntarily afforded Defendants by Plaintiffs to respond to the Complaint and one that Plaintiffs believe is entirely reasonable and equitable under the circumstances. To Plaintiffs' surprise, instead of adopting Plaintiffs' spirit of cooperation, and obviating the need for the Bifurcation Motion and the briefing it is breeding, Defendants rejected Plaintiffs' proposed briefing schedule, providing no explanation other than that they were unsure the Court would approve it. Having had their cooperation taken for granted by Defendants and in the absence of a fair and satisfactory agreed briefing schedule with respect to the Initial 12(b) Motion, Plaintiffs do not support the Bifurcation Motion as proposed by Defendants.

3. Moreover, the bifurcation of Defendants' Rule 12(b) briefing is not necessary in this case. Plaintiffs believe that Defendants' contemplated motions to dismiss are without merit, and therefore bifurcated briefing is likely to simply delay the proceedings and do little to conserve judicial resources. However, consistent with Plaintiffs' constructive approach to date in this action, Plaintiffs do not oppose the bifurcation of the Rule 12(b) briefing and defer to the Court whether such relief is appropriate here. However, in the event the Court authorizes bifurcated Rule 12(b) briefing, Plaintiffs respectfully request that the Court grant Plaintiffs a 30-day extension to respond to the Initial 12(b) Motion pursuant to the Rule 7.1(a)(7) of the Local Rules of Civil Procedure. In the event the Court denies the Bifurcation Motion, Plaintiffs respectfully request the Court order the parties to confer in good faith with respect to an

appropriate briefing schedule. In either case, Plaintiffs look forward to the opportunity to adjudicate their claims against Defendants.

Dated: July 1, 2021

Respectfully submitted,

/s/ Steven R. Ruby

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of July, 2021, the foregoing “Plaintiffs’ Response to Defendants’ Motion for Bifurcated Rule 12 Briefing and Request for Extension of Time to Respond” was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Steven R. Ruby
Steven R. Ruby (WVSB No. 10752)